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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,826	12/19/2003	Bradley A. Pelsue	TAP007/214032	6154

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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER	
FOX, CHARLES A	

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/741,826	PELSUE, BRADLEY A.	
	Examiner	Art Unit	
	Charles A. Fox	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-21 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 19 December 2003 is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the telescopic extension mast in its retracted and extended states, along with the safety line within the member must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It is not clear how the telescopic member shown in figure 2 passes the safety line that is shown in figure12. A new drawing will clarify this matter.

The drawings are objected to because figure 3A has two hooks attached to the end of the extension boom, which appears to be in error.

Figures 11-13 are objected to as having poor quality reference numerals, they should be the same typeface as found in the other drawings.

Further figures 12 and 13 have certain parts of the instant invention called out by words. Only reference numerals should be used and the reference numerals must be described in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The use of the trademark Kevlar has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Independent claims 1,11,17 and 21 all have the limitation that the device be "man-rated" as defined by OSHA. Applicants own disclosure presents evidence that

their device can not meet the OSHA requirements. On page 7 lines 14-28 applicant states that the anchorage structure of their device can withstand a force of up to 1312.5 ft-lbs. To meet the OSHA requirement of being a man-rated device the device must be able to withstand a force of 1320 ft-lbs. As the anchorage structure of the applicant device can not withstand the forces needed to meet the OSHA requirements the limitation of the device being man-rated is not supported by the specification. The limitation must be removed from the claims in order to render this rejection moot. In the rejections below man-rated is simply treated as having the ability to lift a person. It is noted that OSHA regulation 1926.502 (d)(15) requires that all anchor point for fall arrest equipment be able to support at least 5000 pounds per person being anchored thereon.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-10 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 8 and 21 both have the limitation of the dynamic rating that corresponds to a person secured to the device. Since the person using the device is unknown and each person would present a different dynamic load to the device it is not clear what the dynamic rating of the device is or how it is adjusted to meet the dynamic load of individual users as claimed. Claims 9 and 10 use the same dynamic load information as in claim 8 and therefore have the same indefiniteness problems.

Claims 1,8,11 and 21 contain the trademark/trade name Kevlar. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a material for forming a tube and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (f) he did not himself invent the subject matter sought to be patented.

Claims 1-21 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. The applicant of the instant invention is claiming substantially the same device as presented in WO 01/24972 to Choate et al. The instant inventor may be the inventor of portions of this application, but the bulk of the instant invention was disclosed in WO 01/24972. Any portions of the instant invention related to or disclosed in the WO 01/24972 application must be stated as being prior art, with the remaining portions being improvements upon that prior art. The applicant

in this application may only claim improvements on the device taught by Choate et al. It is also noted that the WO 01/24972 application is not commonly owned with the instant application. This rejection will be withdrawn once the claims are written in proper form, i.e. a Jepson type claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choate et al. in view of Fairman. Choate et al. WO 01/24972 teaches a device for accessing a confined space comprising:

a base (710) adapted to be mounted proximate to associated structure of the confined space;

a member (14) being substantially cylindrical in shape attached to said base by a first end and a means(52) for removable securing a person to a second end;

wherein the member is formed of either composite materials or aluminum;

said member extending substantially vertically from said base;

a reinforced portion that is comprised of an insert (40) in said member;

modular components including a two legged elbow (18) and a plurality of different length extension masts (22);said modular parts constructed of similar materials as the member;

an extension mast (54) received substantially within said member. Choate et al. do not teach a safety line connected to opposite ends of any of their members. Fairman US 3,958,367 teaches a cylindrical shaped spring (2) with a safety cable (4) stretched within the spring and connected proximate its ends for capturing the spring in the event of its failure due to breaking. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Choate et al. with an internal safety line as taught by Fairman in order to keep the device connected to an anchor point even upon failure of and individual part.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6607. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

CAF
CHF
6-13-05